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Missouri Surgeon and Kansas Distributor Agree to Plead Guilty to Conspiring to Pay and Receive Kickbacks to Induce Use of Spinal Implants and Obstruction

Medical device company paid surgeon $379,000 in kickbacks and paid distributor $1.2 million in commissions

BOSTON – A Missouri surgeon and Kansas distributor have been charged and agreed to plead guilty to conspiring to pay and receive kickbacks aimed at inducing the use of spinal implants sold by a medical device company as well as engaging in conduct aimed at obstructing the government's federal investigation into that the kickback scheme.

Jason Montone, DO, 44, of Lawson, Mo., will plead guilty to one count of conspiracy to violate the Anti-Kickback statute and one count of obstruction. According to the terms of Montone's plea agreement, the government will recommend a sentence at the low end of the sentencing guidelines, one year of supervised release, a fine and forfeiture of $379,000 – the amount that he received in sham consulting fees from the medical device company.

John Balzer, 42, of Lenexa, Kan., will plead guilty to one count of conspiracy to violate the Anti-Kickback statute and one count of witness tampering. According to the terms of Balzer's plea agreement, the government will recommend a sentence at the low end of the sentencing guidelines, one year of supervised release, and forfeiture of $1,264,501 – the amount that he received in commissions from the medical device company for products Montone used in his spine surgeries.

Plea hearings have not yet been scheduled by the Court.

"Kickbacks paid to influence physicians are illegal and incompatible with a properly functioning health care system," said United States Attorney Andrew E. Lelling. "We will take all necessary steps to ensure that patients receive, and the government pays for, health care that is based solely on sound medical judgment, not compromised by kickbacks."

"These charges serve as a strong reminder that we will not tolerate bribes and corruption within our federal healthcare system, nor will we accept acts of obstruction that attempt

to disrupt our pursuit of justice," said Phillip M. Coyne, Special Agent in Charge for the Office of Inspector General of the U.S. Department of Health and Human Services. "Surgeons are entrusted to make decisions for the best interests of their patients, not because of the corrupting influence of kickbacks. We will fervently pursue kickback schemes that seek to undermine our healthcare system no matter how those schemes are disguised."

"When surgeons participate in a kickback scheme with medical device companies, they trade their commitment to patient care for personal gain. Any efforts to obstruct our investigations only compound that harm," said Joseph R. Bonavolonta, Special Agent in Charge of the FBI Boston Division. "Sham consulting arrangements undermine the integrity of the medical decision-making process, and this case sends a clear message that these types of financial arrangements will not be tolerated."

According to the charging documents, between late 2012 and October 2015, Balzer, Montone, and their co-conspirators engaged in a scheme in which the medical device company and its CEO and CFO paid Montone a total of $379,000 pursuant to a sham consulting program that paid Montone $500 to $750 per hour for supposedly performing consulting services. Although the medical device company's physician-consulting program was purportedly directed at gathering technical feedback about its products from surgeons, the company and its CEO and CFO allegedly used the program, and the kickbacks they paid pursuant to that program, to induce and reward Montone's decision to use the company's products.

To accomplish this, the medical device company, among other things, tracked the sales volumes of Montone and other physician-consultants and used that information to determine how much the company would pay Montone, regardless of how much consulting was actually performed. During the conspiracy, Balzer and Montone represented that Montone had spent hundreds of hours evaluating products, discussing industry trends and educating medical residents. In fact, Montone spent only a small fraction of his reported time performing actual consulting activities for the medical device company. In exchange for the consulting payments he received, Montone used over $4.5 million of the company's products in his surgeries, often in Balzer's presence or at his prompting, including excessive amounts of certain of the company's products. During this time, Montone performed numerous surgeries on patients who were Medicare or Medicaid beneficiaries. The medical device company agreed to pay Balzer a 25% commission on all of the medical device company's products that Montone used in his spine surgeries. Over the period of the time covered by the conspiracy, the company paid Balzer over $1.2 million in commissions for spine products Montone used.

In September 2017, after Montone learned of the government's investigation into the medical device company, he created false documents purporting to show work he ostensibly performed pursuant to his consulting agreement and later produced those false documents to the government. In December 2018, Montone sat for an interview with government agents and withheld information concerning his conversations with the company's employees regarding how his consulting fees would be determined; how he came up with the number of alleged consulting hours he had performed; and his conversations with Balzer about violations of the Anti-Kickback Statute.

In February 2019, after Balzer became aware of the government's investigation he advised Montone to falsely tell the government that Montone had performed legitimate consulting in an amount equal to the hundreds of hours Balzer and Montone had reported and that Montone was "surprised" the company was missing documentation

showing Montone's feedback and consulting work. In fact, Balzer knew that neither representation was true.

The charge of witness tampering provides for a sentence of up to 20 years in prison, three years of supervised release, a fine of $250,000 or twice the gross loss to the victims and restitution. The charges of conspiracy to violate the Anti-Kickback Statute and obstruction of a criminal health care fraud investigation each provide for a sentence of up to five years in prison, three years of supervised release, a fine of $250,000 or twice the gross loss to the victims, and restitution. Sentences are imposed by a federal district court judge based upon the U.S. Sentencing Guidelines and other statutory factors.

U.S. Attorney Lelling, HHS-OIG SAC Coyne and FBI SAC Bonavolonta made the announcement. Assistant U.S. Attorneys Patrick M. Callahan, Abraham R. George and David J. Derusha of Lelling's Health Care Fraud Unit and Affirmative Civil Enforcement Unit are prosecuting the cases.

The details contained in the court documents concerning other individuals and entities are allegations only and those individuals and entities are presumed innocent unless and until proven guilty beyond a reasonable doubt in a court of law.

Topic(s):
Health Care Fraud

Component(s):
USAO - Massachusetts

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